

FACSIMILE COVER PAGE

To : Barbara Gronemous
Sent : 3/5/2003 at 9:35:54 AM
Subject :

From : B. Hammarback
Pages : 4 (including Cover)

Here is my first attempt at this. It simplifies the process and makes the bill revenue neutral. It might actually save money, because it is self enforcing and doesn't require enforcement personnel or any other bureaucracy. Barry Hammarback. Please make some copies of this for the meeting.

1 General Purpose of the Bill "Wisconsin Consumers Electrical Bill of Rights

- 2
- 3 1. To give consumers rights to enforce provisions of the Wisconsin State electrical code.
- 4 2. To have a neutral effect on state revenue by effectuating enforcement of statutes by
- 5 state citizens and eliminating the need for enforcement personnel on state budgets.
- 6 3. To eliminate anti consumer effects of previous statutory changes and allow Wisconsin
- 7 citizens to enforce statutes currently in effect.
- 8 4. To ensure Wisconsin Landowners that their constitutional right to free and peaceful
- 9 enjoyment of their property will be enforced.
- 10 5. To ensure Wisconsin real and personal property owners that rights in real estate and
- 11 personal property will not be taken without suitable notice and compensation.
- 12

13

14 Consumer Electrical Bill of Rights

15

16 1) Definitions:

17 a) Person is a natural person, corporation, partnership, limited liability company,

18 municipality or cooperative association.

19

20 b) Objectionable flow of current (as utilized in 96d) is a flow of electrical current

21 of any magnitude in a grounding conductor, or any other normally non current

22 carrying conductor (for example, but not limited to, waterlines, metal siding,

23 swimming pools or swing sets) lasting more than 5 seconds.

24

25 c) Notice is either written or oral communication that objectionable current exists

26 , given to the person believed to be causing the objectionable current.

27

28 d) Electrical energy is a product when sold to a consumer. Neutral currents

29 created during the sale of said energy constitute a part of that product, no matter

30 what the magnitude of said currents.

31

32 2) Objectionable currents are prohibited, and causing objectionable currents is prohibited.

33

34 3) Objectionable current flowing or created in or on the earth without the written

35 permission of the landowner or leaseholder is a trespass.

36

37 4) No easement for objectionable currents may be obtained by prescription.

38

39 5) A person aggrieved by objectionable currents shall have the right to petition for an

40 injunction to stop objectionable currents, whether or not harm is being caused

41

42 6) A person that is notified it is causing an objectionable current and who fails to

43 eliminate the objectionable current within 30 days of said notice shall be liable for treble

44 the amount of damages sustained together with actual attorneys fees and costs.

45

46 7)A person selling electrical energy in a manner that causes objectionable currents is not
47 providing reasonably adequate service.

48
49 8)Wis stats 196.64 is amended to read:
50

51 (1) If a director, officer, employee or agent of a public
52 utility, in the course of the discharge of his or her duties, causes or permits to be
53 done any matter, act or thing prohibited or declared to be
54 unlawful under this chapter or ch. 197, or fails to do any act, matter or thing required to be
55 done under this chapter, the public utility shall be liable to
56 the person injured thereby in treble the amount of damages
57 sustained in consequence of the violation. No recovery as in this
58 section provided shall affect a recovery by the state of the
59 penalty prescribed for such violation.
60

61 (2) The burden of proof in an action under sub. (1) rests with
62 the person injured to prove the case by a preponderance of the evidence.
63

64 9)101.865 Is amended to read:
65

66 101.865 Regulation of electric wiring.
67

68 (1) It is hereby made the duty of every contractor and other person, corporation, limited liability
69 company, partnership or cooperative who
70 does any electric wiring in this state to comply with both volumes of the Wisconsin state
71 electrical code and the company furnishing the electric current shall
72 obtain proof of such compliance before furnishing such service;
73 provided, that nothing therein contained shall be construed as prohibiting
74 any municipality from making more stringent regulations than those
75 contained in both volumes of the Wisconsin state electrical code. Proof of such
76 compliance shall consist of a certificate furnished by a municipal or
77 other recognized inspection department or officer, or if there is no such
78 inspection department or officer it shall consist of a written statement
79 furnished by the contractor or other person doing the wiring, indicating
80 that there has been such compliance. Failure to comply with this provision is a failure to provide
81 adequate service if such wiring is performed by an electric utility or an electric cooperative.
82

83 (2) Any person who violates the provisions of this section is guilty of

84 a misdemeanor and shall be fined not less than \$25 nor more than \$100 or
85 imprisoned in the county jail for not less than 30 days nor more than 6
86 months.

87

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90

**Suggested Changes to Preliminary Draft of Bill Regarding
Objectionable Flows of Electric Current**

1. In addition to the change to 196.64(2) as drafted in Section 1, Sec. 196.64(1) should be amended as follows:

196.64 Public utilities, liability for treble damages.

(1) If a director, officer, employee or agent of a public utility, in the course of the discharge of his or her duties ~~wilfully, wantonly or recklessly~~ does, causes or permits to be done any matter, act or thing prohibited or declared to be unlawful under this chapter or ch. 197, or ~~wilfully, wantonly or recklessly~~ fails to do any act, matter or thing required to be done under this chapter, the public utility shall be liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. No recovery as in this section provided shall affect a recovery by the state of the penalty prescribed for such violation.

2. The use of the term "consumer" as defined in the draft is not broad enough. There are Amish farmers and others who are not customers of any electric utility who are adversely affected by current in the earth. Furthermore, the definition of "objectionable flow of current" contains some technical errors, and the five second provision is troublesome for a number of reasons. We have struggled with this issue, but think the following is an appropriate draft of 196.73(1):

196.73 Public rights regarding objectionable flows of electric current. (1) DEFINITIONS. In this section:

(a) "Person" means any individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other

organization which owns, leases or occupies real property.

(b) "Electric provider" means a public utility that furnishes electricity directly or indirectly to the public or a cooperative association organized under ch. 185 for the purpose of providing electric service to its members only.

(c) "Grounding conductor" means a conductor that is used to connect the equipment of the system of an electric provider with a grounding electrode or electrodes.

(d) "Objectionable flow of current" means a flow of electrical current of any magnitude on a grounding conductor, or any other thing which does not normally carry electric current. However, the temporary currents set up under abnormal conditions while the grounding conductors are performing their protective functions relating to faults and lightning are not defined as "objectionable flows of current."

(e) "Electrical energy" is a product when sold to a consumer. Neutral, ground or earth currents created during the sale of said energy constitute a part of that product, no matter what the magnitude of said currents.

products
liability
issue

3. 196.73(2) as drafted needs only minor revision to encompass the consequences of the above definitions. We propose the following:

(2) PROHIBITIONS. (a) No electric provider shall cause an objectionable flow of current to occur on one or more grounding conductors on its system, or on things which do not normally carry current, or on property owned, leased, or occupied by a person. For purposes of Sec. 196.03(1), service by a public utility is not reasonably adequate if the public utility violates this paragraph.

(b) A person who owns, leases, or occupies real property on which an electric provider has violated paragraph (a) may provide written notice of the violation to the electric provider. If the electric provider fails to remedy the violation within 30 days

after receiving such notice, the person may bring an action for enjoining the violation, treble the damages resulting from the violation, or both. If the person prevails in the action, the court shall, notwithstanding sec. 814.04(1), allow reasonable attorney fees and costs to be paid by the electric provider as part of the judgment.

(c) No person, including but not limited to electric providers, may obtain a prescriptive right to cause an objectionable flow of current on the property of another person.

(d) An objectionable flow of current on property owned, leased or occupied by a person constitutes a trespass. Such a trespass may be enjoined without proof of irreparable harm to the person who owns, leases or occupies the real property.

4. Proposed Section 196.73(3) needs minor revisions to comply with the Definitions section above:

(3) DUTY TO REMEDY. (a) Except as provided in pars. (b) and (c), no later than January 1, 2012, each electric provider shall remedy all problems associated with its plant or equipment that cause an objectionable flow of current to occur on grounding conductors, on things which do not normally carry electric current, or on property owned, leased or occupied by a person.

(b) Except as provided in par. (c), if an objectionable flow of current is discovered on property owned, leased, or occupied by a person prior to 2011, the electric provider that provides electric service to the person shall remedy all problems associated with its plant or equipment that cause the objectionable flow of current no later than one year after the objectionable flow of current is discovered.

(c) Subsection (3)(b) does not apply to objectionable flows of current for which a person provides notice under sub. (2)(b).

5. We believe that (4) REBUTTABLE PRESUMPTION of the draft is not necessary and may create more confusion than it solves in this redraft. The redraft authorizes issuance of injunctions

without proof of harm. The rebuttable presumption therefore would not be helpful in obtaining injunctions. It would be helpful to persons who are seeking damages. However, as presently drafted it might, if included, make ambiguous the right to obtain an injunction without proof of harm.

6. The PENALTIES section of proposed 196.73(5) in the original draft would simply be renumbered to be 196.73(4).

7. A Section 196.73(5) should be added to make clear that the new law would not eliminate remedies available under present law:

(5) OTHER REMEDIES. This section shall not abrogate or modify rights of persons under the common law, or under present statutory law except as specifically set forth.

8. Section 3 of the preliminary draft, creating sec. 893.28(2) of the statutes, would remain unchanged.

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C2-1997

National Electrical Safety Code®

Secretariat

Institute of Electrical and Electronics Engineers, Inc.

Approved 15 March 1996

Institute of Electrical and Electronics Engineers, Inc.

Approved 6 June 1996

American National Standards Institute

1997 Edition

Abstract: This standard covers basic provisions for safeguarding of persons from hazards arising from the installation, operation, or maintenance of 1) conductors and equipment in electric supply stations, and 2) overhead and underground electric supply and communication lines. It also includes work rules for the construction, maintenance, and operation of electric supply and communication lines and equipment.

The standard is applicable to the systems and equipment operated by utilities, or similar systems and equipment, of an industrial establishment or complex under the control of qualified persons.

This standard consists of the introduction, definitions, grounding rules, list of referenced and bibliographic documents, and Parts 1, 2, 3, and 4 of the 1997 Edition of the National Electrical Safety Code.

Keywords: communications industry safety; construction of communication lines; construction of electric supply lines; electric supply stations, electric utility stations; electrical safety; high-voltage safety; operation of communications systems; operation of electric supply systems; power station equipment; power station safety; public utility safety; safety work rules; underground communication line safety; underground electric line safety

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Connection shall be made to the neutral of the source transformer and at cable termination points.

(3) Cable With Insulating Jacket

Additional bonding and connections between the cable insulation shielding or sheaths and the system ground are recommended. In multi-grounded shielded cable systems, the shielding (including sheath) shall be grounded at each cable joint exposed to personnel contact. Where multi-grounded shielding cannot be used for electrolysis or sheath-current reasons, the shielding sheaths and splice-enclosure devices shall be insulated for the voltage that may appear on them during normal operation.

Bonding transformers or reactors may be substituted for direct ground connection at one end of the cable.

3. Separate Grounding Conductor

If a separate grounding conductor is used as an adjunct to a cable run underground, it shall be connected either directly or through the system neutral to the source transformers, source transformer accessories, and cable accessories where these are to be grounded. This grounding conductor shall be located in the same direct burial or duct bank run (or the same duct if this is of magnetic material) as the circuit conductors.

EXCEPTION: The grounding conductor for a circuit that is installed in a magnetic duct need not be in the same duct if the duct containing the circuit is bonded to the separate grounding conductor at both ends.

C. Messenger Wires and Guys

1. Messenger Wires

Messenger wires required to be grounded shall be connected to grounding conductors at poles or structures at maximum intervals as listed below:

- a. Where messenger wires are adequate for system grounding conductors (Rules 93C1, 93C2, and 93C5), four connections in each 1.6 km (mile).
- b. Where messenger wires are not adequate for system grounding conductors, eight connections in each 1.6 km (mile), exclusive of service grounds.

2. Guys

Guys that are required to be grounded shall be connected to one or more of the following:

- a. A grounded metallic supporting structure.
- b. An effective ground on a nonmetallic supporting structure.
- c. A line conductor that has at least four ground connections in each mile of line in addition to the ground connections at individual services.

3. Common Grounding of Messengers and Guys on the Same Supporting Structure

- a. Where messengers and guys on the same supporting structure are required to be grounded, they shall be bonded together and grounded by connection to:
 - (1) One grounding conductor that is grounded at that structure, or to
 - (2) Separate grounding conductors or grounded messengers that are bonded together and grounded at that structure, or to
 - (3) One or more grounded line conductors or grounded messengers that are (a) bonded together at this structure or elsewhere and (b) multi-grounded elsewhere at intervals as specified in Rules 92C1 and 92C2.
- b. At common crossing structures, messengers and guys that are required to be grounded shall be bonded together at that structure and grounded in accordance with Rule 92C3a.

EXCEPTION: This rule does not apply to guys that are connected to an effectively grounded overhead static wire.

D. Current in Grounding Conductor

Ground connection points shall be so arranged that under normal circumstances there will be no objectionable flow of current over the grounding conductor. If an objectionable flow of current occurs over a grounding conductor due to the use of multi-grounds, one or more of the following should be used:

1. Abandon one or more grounds.

2. Change location of grounds.
3. Interrupt the continuity of the conductor between ground connections.
4. Subject to the approval of the administrative authority, take other effective means to limit the current.

The system ground of the source transformer shall not be removed.

The temporary currents set up under abnormal conditions while the grounding conductors are performing their intended protective functions are not considered objectionable. The conductor shall have the capability of conducting anticipated fault current without thermal overloading or excessive voltage buildup. Refer to Rule 93C.

E. Fences

Fences that are required to be grounded by other parts of this code shall be designed to limit touch, step, and transferred voltages in accordance with industry practices.

NOTE: IEEE Std 80-1986 [B21]¹² is one source that may be utilized to provide guidance in meeting these requirements.

The grounding connections shall be made either to the grounding system of the enclosed equipment or to a separate ground.

1. Fences shall be grounded at each side of a gate or other opening.
2. Gates shall be bonded to the grounding conductor, jumper, or fence.
3. A buried bonding jumper shall be used to bond across a gate or other opening in the fence, unless a nonconducting fence section is used.
4. If barbed wire strands are used above the fence fabric, the barbed wire strands shall be bonded to the grounding conductor, jumper, or fence.
5. When fence posts are of conducting material, the grounding conductor shall be connected to the fence post or posts as required with suitable connecting means.
6. When fence posts are of nonconducting material, suitable bonding connection shall be made to the fence mesh strands and the barbed wire strands at each grounding conductor point.

93. Grounding Conductor and Means of Connection^(A)

A. Composition of Grounding Conductors

In all cases, the grounding conductor shall be made of copper or other metals or combinations of metals that will not corrode excessively during the expected service life under the existing conditions and, if practical, shall be without joint or splice. If joints are unavoidable, they shall be so made and maintained as to not materially increase the resistance of the grounding conductor and shall have appropriate mechanical and corrosion-resistant characteristics. For surge arresters and ground detectors, the grounding conductor or conductors shall be as short, straight, and free from sharp bends as practical. The structural metal frame of a building or structure may serve as a grounding conductor to an acceptable grounding electrode.

In no case shall a circuit-opening device be inserted in the grounding conductor or connection except where its operation will result in the automatic disconnection from all sources of energy of the circuit leads connected to the equipment so grounded.

EXCEPTION 1: For dc systems over 750 V, grounding conductor circuit-opening devices shall be permitted for changing between a remote electrode and a local ground through surge arresters.

EXCEPTION 2: Temporary disconnection of grounding conductors for testing purposes, under competent supervision, shall be permitted.

EXCEPTION 3: Disconnection of a grounding conductor from a surge arrester is allowed when accomplished by means of a surge-arrester disconnecter.

NOTE: The base of the surge arrester may remain at line potential following operation of the disconnecter.

¹²The numbers in brackets correspond to those bibliographical items listed in Appendix B.

Memorandum

To: Drafting File, LRB-2364
From: Mark Kunkel
Date: 04/16/2003
Re: Meeting

I met with Bill Cross, Rob Marchant, and Barry Hammarback on April 3 and received the following instructions for the next version of the draft:

1. DOJ should be authorized to enforce the bill, rather than the PSC. Also, allow DOJ to recover attorney fees and create an appropriation for the fees.
2. Some courts have held that you cannot bring a trespass action for stray voltage because electricity isn't the type of thing that can trespass on property. Therefore, the next version should specify that a trespass action may be brought.
3. On a related point, the next version must specify that irreparable harm is not required for a preliminary injunction to enjoin a stray voltage trespass.
4. The rationale for including the language that electricity is a product is to reverse a Court of Appeals decision (*Kolpine v. Pioneer Power*) that says you can't bring a products liability action for stray voltage. Check case and create appropriate language.
5. Eliminate "willful" etc. requirement from s. 196.64.
6. No need to address the enforcement of the state electric code.
7. Don't limit bill to "consumers". For example, Amish farmers who are not customers of utilities may be harmed by utilities.
8. Allow a person to sue for violations of objectionable flows of current, even if notice is not given prior to bring action. Instead, allow for treble damages if notice was given and utility failed to remedy within 30 days. (If notice not given, allow action, but no treble damages.)

Finally, the next version will not include statements of legislative intent. We agreed that the next version should be reviewed to make sure it achieves intent. If intent is achieved, the statements are not necessary. (Rob and I also explained the LRB position on such statements.)

D-NOTE

-2364/1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Tomorrow
4/16
10am

RM NOT
RUN

INSERT A ✓

REGEN

1 AN ACT *to amend* 196.64 (1), 196.64 (2) and 893.28 (2); and *to create* 20.455 (1)
2 (gm) and 196.73 of the statutes; **relating to:** objectionable flows of electric
3 current, burden of proof and damages in certain actions against public utilities,
4 making an appropriation, and providing penalties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.455 (1) (gm) of the statutes is created to read:

20.455 (1) (gm) *Investigation and prosecution; objectionable flows of current.*

7 All moneys received under s. 196.73 (5), ⁹² ^{Δ(d)} for the expenses of investigation and
8 prosecution of violations of s. 196.73, including attorney fees.

(2)

1 **SECTION 2.** 196.64 (1) of the statutes is amended to read:

2 196.64 (1) If a director, officer, employee or agent of a public utility, in the course
3 of the discharge of his or her duties, ~~willfully, wantonly or recklessly~~ does, causes or
4 permits to be done any matter, act or thing prohibited or declared to be unlawful
5 under this chapter or ch. 197, or ~~willfully, wantonly or recklessly~~ fails to do any act,
6 matter or thing required to be done under this chapter, the public utility shall be
7 liable to the person injured thereby in treble the amount of damages sustained in
8 consequence of the violation. No recovery as in this section provided shall affect a
9 recovery by the state of the penalty prescribed for such violation.

10 **SECTION 3.** 196.64 (2) of the statutes is amended to read:

11 196.64 (2) The burden of proof in an action under sub. (1) rests with the person
12 injured to prove the case by ~~clear and convincing~~ a preponderance of the evidence.

13 **SECTION 4.** 196.73 of the statutes is created to read:

14 **196.73 Bill of rights regarding objectionable flows of electric current.**

15 **(1) DEFINITIONS.** In this section:

16 (a) “Electric provider” means a public utility that furnishes electricity directly
17 or indirectly to the public or a cooperative association organized under ch. 185 for the
18 purpose of providing electric service to its members only.

19 (b) “Grounding conductor” means a conductor that connects the electrical
20 distribution system of an electric provider to a grounding electrode or electrodes.

21 (c) “Objectionable flow of current” means a flow of electrical current of any
22 magnitude on a grounding conductor or any other conductor that normally does not
23 carry electrical current, except for any temporary flow of electrical current that is
24 caused by abnormal conditions and results from the performance of a grounding
25 conductor’s protective functions regarding faults or lightning.

1 (2) ELECTRIC PROVIDER DUTIES. (a) No electric provider may cause an
2 objectionable flow of current to occur on property owned, leased, or occupied by any
3 other person. For purposes of s. 196.03 (1), service by a public utility is not
4 reasonably adequate if the public utility violates this paragraph.

5 (b) A person who owns, leases, or occupies property on which an electric
6 provider has violated par. (a) may bring an action to enjoin the violation, for damages
7 resulting from the violation, or both. If the person prevails in the action, the court
8 shall, notwithstanding s. 814.04 (1), allow reasonable attorney fees and costs to be
9 paid by the electric provider. The court shall award treble the damages resulting
10 from the violation if, before bringing the action, the person provided written notice
11 of the violation to the electric provider and the electric provider failed to remedy the
12 violation within 30 days after receiving such notice.

13 (c) 1. Except as provided in subds. 2. and 3., no later than January 1, 2012, each
14 electric provider shall remedy all problems associated with its plant or equipment
15 that cause an objectionable flow of current on property owned, leased, or occupied by
16 a person other than the electric provider.

17 2. Except as provided in subd. 3., if an objectionable flow of current is discovered
18 in 2011 on property owned, leased, or occupied by a person that receives electric
19 service from an electric provider, the electric provider shall remedy all problems
20 associated with its plant or equipment that cause the objectionable flow of current
21 no later than one year after the objectionable flow of current is discovered.

22 3. This paragraph does not apply to objectionable flows of current ^{about} for which a
23 person provides notice to an electric provider under par. (b). ✓

24 (3) PRODUCTS LIABILITY. If an electric provider that furnishes electricity to a
25 customer or member causes an objectionable flow of current on property owned,

IN SEPT 3-23
(SEE P 42.13)

or brings an action

1 leased, or occupied by the customer or member, the electric provider is considered,
2 for purposes of any products liability action brought by the customer or member
3 against the electric provider regarding the objectionable flow of current, to have
4 provided a product in a defective condition to the customer or member that is
5 unreasonably dangerous to the customer or member.

6 (4) TRESPASS; EASEMENTS. (a) An objectionable flow of current that an electric
7 provider causes on the property of another person is a trespass on that property,
8 unless the other person expressly consents to the objectionable flow of current. A
9 person is not required to show irreparable harm for a court to issue a preliminary
10 injunction to restrain such a trespass.

11 (b) An electric provider may not obtain a prescriptive right to cause an
12 objectionable flow of current on property on the property of another person.

13 ~~(5) ENFORCEMENT.~~ (d) The attorney general may bring an action to enforce this
14 ^{sub C} section and a court may award the attorney general the reasonable and necessary
15 expenses of prosecution, including attorney fees, from any person who violates this
16 ^{sub C} section. All moneys awarded by a court under this ~~section~~ ^{paragraph} shall be credited to the
17 appropriation account under s. 20.455 (1) (gm). END OF INSERT 3-23

18 ~~(6) PENALTIES.~~ (a) An electric provider that violates sub. (2) (c) 2. may be
19 required to forfeit not more than \$1,000 for each violation. Each day of continued
20 violation constitutes a separate violation.

21 (b) An electric provider that violates sub. (2) (c) 1. shall be required to forfeit
22 not more than \$500,000.

23 ~~(7) OTHER REMEDIES.~~ The rights and remedies under this section are in addition
24 to any other rights or remedies that may exist at law or in equity.

25 SECTION 5. 893.28 (2) of the statutes is amended to read:

1 893.28 (2) Continuous use of rights in real estate of another for at least 10 years
2 by a domestic corporation organized to furnish telegraph or telecommunications
3 service or transmit heat, power or electric current to the public or for public purposes,
4 or a cooperative association organized under ch. 185 to furnish telegraph or
5 telecommunications service or transmit heat, power or electric current to its
6 members, establishes the prescriptive right to continue the use, except as provided
7 by ~~s.~~ ss. 196.73 (4) (b) and 893.29. A person who has established a prescriptive right
8 under this subsection may commence an action to establish prescriptive rights under
9 ch. 843.

10 **SECTION 6. Initial applicability.**

11 (1) The treatment of section 196.64 (1) and (2) of the statutes first applies to
12 violations occurring on the effective date of this subsection.

13 (2) The treatment of section 196.73 (3) and (4) (a) of the statutes first applies
14 to objectionable flows of current that occur on the effective date of this subsection.

15 **(END)**

1

INSERT A:

This bill prohibits electric utilities and cooperatives from causing objectionable flows of current on the property of others. "Objectionable flow of current" is defined as a flow of electrical current of any magnitude on a grounding conductor or any other conductor that normally does not carry electrical current. A "grounding conductor" is defined as a conductor that connects the distribution system of an electric utility or cooperative to a grounding electrode or electrodes. Excluded from the definition of "objectionable flow of current" and therefore not prohibited by the bill, are temporary flows of electric current ^{that are} caused by abnormal conditions and ^{that} result from the performance of a grounding conductor's protective functions regarding faults or lightning.

The bill allows a person who owns, leases, or occupies property on which an electric utility or cooperative violates the prohibition to bring an action in court to enjoin the violation and for any damages resulting from the violation. In addition, if the person prevails in the court action, the court is required to award the person attorney fees and costs. Also, if the person provided written ^{notice} to the electric utility or cooperative about the violation before bringing the court action, and the electric utility or cooperative failed to remedy the violation within 30 days after receiving the notice, the court must award treble the damages resulting from the violation.

The bill ~~also~~ requires each electric utility and cooperative to remedy all problems associated with its plant or equipment that cause objectionable flows of current on the property of others. The deadline for meeting this requirement is January 1, 2012. However, if an objectionable flow of current is discovered in 2011, the electric utility or cooperative must remedy problems with plant ^s and equipment no later than one year after the discovery. These deadlines do not apply to objectionable flows of current about which a person provides written notice or brings a court action under the bill. The penalty for failing to comply with the 2012 deadline is a forfeiture of not more than \$500,000. The penalty for failing to remedy problems discovered in 2011 within the one-year deadline is a forfeiture of not more than \$1,000 for each day of failure to comply.

~~In addition,~~ the bill provides that an objectionable flow of current that an electric utility or provider causes on the property of another person is a trespass on that property, unless the other person expressly consents to the objectionable flow of current. If a person brings an action for a preliminary injunction to enjoin the trespass, the bill provides that the person is not required to show irreparable harm for the court to grant the preliminary injunction. Under current law, a person seeking a preliminary injunction must show irreparable harm and satisfy other requirements. The bill also prohibits an electric utility or cooperative from obtaining a prescriptive right to cause an objectionable flow of current on the property of another person.

The bill ~~also~~ allows a person to bring a products liability action against an electric utility or cooperative that causes an objectionable flow of current on property owned, leased, or occupied by the person. Under current law, Wisconsin courts have

specified the elements that ^{g two} must be satisfied for a plaintiff to prevail in a products liability action. The first ~~e~~^g elements are: 1) the product sold must be in a defective condition; and 2) the product must be unreasonably dangerous. In addition, in *Koplin v. Pioneer Power & Light Co., Inc.*, 154 Wis. 2d. 487, 500 (1990), the Wisconsin Court of Appeals held that a plaintiff could not bring a products liability action against an electric utility for stray voltage. (The Wisconsin Supreme Court reversed the Court of Appeals on other grounds and did not address the products liability holding.) This bill reverses the Court of Appeals holding regarding products liability by specifying that, in a products liability action, an electric utility or cooperative that causes an objectionable flow of current on the property of another person is considered to have provided a product in a defective condition that is unreasonably dangerous. As a result, the first ~~e~~^{g two} elements required for a products liability action are satisfied.

Finally, the bill ~~now~~^g does all of the following:

1) The bill allows the attorney general to enforce the prohibition regarding objectionable flows of current and the requirements regarding the deadlines for remedying problems with plant^s and equipment. A court is allowed to award the attorney general prosecution expenses, including attorney fees.

2) The bill provides that an electric utility that causes an objectionable flow of current on the property of another is considered to have violated its duty under current law to provide reasonably adequate service.

3) The bill allows a person who shows, by a preponderance of the evidence, that the person is injured by a public utility's violation of laws enforced by the Public Service Commission to collect treble the damages resulting from the injury. Under current law, treble damages are allowed only if the violation is willful, wanton, or reckless. In addition, under current law, the evidentiary standard that applies is clear and convincing evidence, which requires more evidence than the standard under the bill.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2364/1dn

MDK: /:....

WLj

Representative Gronemus:

Please review this bill to make sure that it achieves your intent. In particular, please review the language regarding products liability. I think that to achieve your intent, the bill should specifically address products liability actions, rather than simply define electric energy as a product. Note also the discussion of the Court of Appeals decision in the analysis.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2364/1dn
MDK:wlj:cph

April 15, 2003

Representative Gronemus:

Please review this bill to make sure that it achieves your intent. In particular, please review the language regarding products liability. I think that to achieve your intent, the bill should specifically address products liability actions, rather than simply define electric energy as a product. Note also the discussion of the Court of Appeals decision in the analysis.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

REVISIONS TO LRB2364/1dn

1. Page 4: line 4: Change to: "196.73 Wisconsin Consumers Electrical Bill of Rights regarding objectionable flows of electrical current.
2. Page 4: Create a new (1) as follows:
 - (1) Intent: To provide good power quality and electrical safety for the health and well being of all of Wisconsin.

3. Page 4: Definition of "Objectionable Flow of Current": means steady state of load current for five seconds or more ~~over the grounding conductor of any electrical provider as defined in (a)~~, except for any temporary flow of electrical fault current that is caused by phase-to-ground fault(s) conditions and results from the performance of a grounding conductor's protective functions regarding faults or lightning ~~or five seconds or less for the following protective devices to operate: relay operated circuit breakers, a circuit breaker, a fuse, a recloser, or other protective devices operating instantaneously or with a short time delay.~~

4. Page 6: Line 2, after property ":", Delete line 3 and replace with: "no allowable easement is obtainable for objectionable flow of current". "A".
5. Page 6: Line 8: after 2 . delete present language up to the word violation and replace with: " shall be required to forfeit \$1,000 for each violation."
6. Page 6: Line 12: Change to: "not more than \$500,000 per individual complainant."

This goes
in page 4
in line 15??

lightning ~~for~~ (not in) 5 seconds or less

we decided
to RA here
this 2 ch b.11

Kunkel, Mark

From: Marchant, Robert
Sent: Tuesday, June 03, 2003 2:30 PM
To: Kunkel, Mark
Subject: RE: Research I'm gonna bug you about

Please review the definition of "objectionable flow of current" in proposed s. XXX.XX (X). In addition to deleting language that appeared to be unnecessary, I re-worded the definition for more clarity. Although I tried to maintain your intended meaning, it is possible that I inadvertently changed the meaning of the definition.

-----Original Message-----

From: Kunkel, Mark
Sent: Tuesday, June 03, 2003 2:24 PM
To: Marchant, Robert
Subject: RE: Research I'm gonna bug you about

Can you give me a sentence for the rationale for making your changes? (For the d-note.)

-----Original Message-----

From: Marchant, Robert
Sent: Tuesday, June 03, 2003 2:23 PM
To: Kunkel, Mark
Subject: RE: Research I'm gonna bug you about

Here's my revision (they should review it carefully):

"Objectionable flow of current" means a steady-state electrical current that lasts for at least five seconds on a grounding conductor or any other conductor that normally does not carry electrical current, except for any temporary fault current that is caused by a phase-to-ground fault condition and that results from the performance of a grounding conductor's protective functions.

-----Original Message-----

From: Kunkel, Mark
Sent: Tuesday, June 03, 2003 1:29 PM
To: Marchant, Robert
Subject: FW: Research I'm gonna bug you about

I'm worried about the boldfaced and italicized words:

"Objectionable flow of current" means a ***steady state*** of ***load*** electrical current for five seconds or more on a grounding conductor or any other conductor that normally does not carry electric current, except for any temporary flow of electrical ***fault current*** that is caused by a ***phase-to-ground fault condition*** and that results from the performance of a grounding conductor's protective functions regarding ***faults*** or lightning.

REVISIONS TO LRB2364/1dn

1. Page 4: line 4: Change to: "196.73 Wisconsin Consumers Electrical Bill of Rights regarding objectionable flows of electrical current."

2. Page 4: Create a new (1) as follows:

(1) ~~Intent~~ ^{Purpose}: To provide good power quality and electrical safety for the health and well being of all of Wisconsin. _{on a}

3. Page 4: Definition of "Objectionable Flow of Current": means steady state of load current for five seconds or more over the grounding conductor of any electrical provider as defined in (a), except for any temporary flow of electrical fault current that is caused by phase-to-ground fault(s) conditions and results from the performance of a grounding conductor's protective functions regarding faults or lightening, or five seconds or less for the following protective devices to operate: relay operated circuit breakers, a circuit breaker, a fuse, a recloser, or other protective devices operating instantaneously or with a short time delay.

or an other conductor that does not normally carry

4. Page 6: Line 2, after property "; Delete line 3 and replace with: "no allowable easement is obtainable for objectionable flow of current". "A".

5. Page 6: Line 8: after 2. delete present language up to the word violation and replace with: "shall be required to forfeit \$1,000 for each violation."

6. Page 6: Line 12: Change to: "not more than \$500,000 per individual complainant."

change definition
see copy

allow 5 seconds or less
fuses for
the following
protective devices
to operate,
including
fuses

circuit
breakers
relay operated
circuit breakers
reclosers
or other protective
devices
operating instantaneously
or w/ a short
time delay

let run
to 500 kV \$1 M

needed
to
prevent
fire



2003 BILL

= delete
please

To: Mark

From: Bill Cross
Marjorie Wilson

231-2277

255-1400

the remediation of

1 AN ACT to amend 196.64 (1), 196.64 (2) and 893.28 (2); and to create 20.455 (1)

2 (gm) and 196.73 of the statutes; relating to: objectionable flows of electric

3 current, burden of proof and damages in certain actions against public utilities,

4 making an appropriation, and providing penalties. and the creation of the

~~Wisconsin Electrical Consumers Billing Rights for the safety and health~~
of all Wisconsin

Analysis by the Legislative Reference Bureau

~~delete~~
This bill prohibits electric utilities and cooperatives from causing objectionable flows of current on the property of others. "Objectionable flow of current" is defined as a flow of electrical current of any magnitude on a grounding conductor or any other conductor that normally does not carry electrical current. A "grounding conductor" is defined as a conductor that connects the distribution system of an electric utility or cooperative to a grounding electrode or electrodes. Excluded from the definition of "objectionable flow of current," and therefore not prohibited by the bill, are temporary flows of electrical current that are caused by abnormal conditions and that result from the performance of a grounding conductor's protective functions regarding faults or lightning.

a steady state of current for five(s) seconds or more
The bill allows a person who owns, leases, or occupies property on which an electric utility or cooperative violates the prohibition to bring an action in court to enjoin the violation and for any damages resulting from the violation. In addition, if the person prevails in the court action, the court is required to award the person attorney fees and costs. Also, if the person provided written notice to the electric utility or cooperative about the violation before bringing the court action, and the electric utility or cooperative failed to remedy the violation within 30 days after phase-to-ground fault(s)

that normally does not carry electrical current.

receiving the notice, the court must award treble the damages resulting from the violation.

The bill requires each electric utility and cooperative to remedy all problems associated with its plant or equipment that cause objectionable flows of current on the property of others. The deadline for meeting this requirement is January 1, 2012. However, if an objectionable flow of current is discovered in 2011, the electric utility or cooperative must remedy problems with plants and equipment no later than one year after the discovery. These deadlines do not apply to objectionable flows of current about which a person provides written notice or brings a court action under the bill. The penalty for failing to comply with the 2012 deadline is a forfeiture of not more than \$500,000. The penalty for failing to remedy problems discovered in 2011 within the one-year deadline is a forfeiture of not more than \$1,000 for each day of failure to comply. *per individual complaint.*

Mark 15
Mark explain?

delete The bill provides that an objectionable flow of current that an electric utility or provider causes on the property of another person is a trespass on that property, ~~unless the other person expressly consents to the objectionable flow of current.~~ If a person brings an action for a preliminary injunction to enjoin the trespass, the bill provides that the person is not required to show irreparable harm for the court to grant the preliminary injunction. Under current law, a person seeking a preliminary injunction must show irreparable harm and satisfy other requirements. The bill also prohibits an electric utility or cooperative from obtaining a prescriptive right to cause an objectionable flow of current on the property of another person.

*No allowance
easement
is ok
able for
objectionable
flow of
current.
Do we
need to
explain
why?*

The bill allows a person to bring a products liability action against an electric utility or cooperative that causes an objectionable flow of current on property owned, leased, or occupied by the person. Under current law, Wisconsin courts have specified the elements that must be satisfied for a plaintiff to prevail in a products liability action. The first two elements are: 1) the product sold must be in a defective condition; and 2) the product must be unreasonably dangerous. In addition, in *Koplin v. Pioneer Power & Light Co., Inc.*, 154 Wis. 2d. 487, 500 (1990), the Wisconsin Court of Appeals held that a plaintiff could not bring a products liability action against an electric utility for stray voltage. (The Wisconsin Supreme Court reversed the Court of Appeals on other grounds and did not address the products liability holding.) This bill reverses the Court of Appeals holding regarding products liability by specifying that, in a products liability action, an electric utility or cooperative that causes an objectionable flow of current on the property of another person is considered to have provided a product in a defective condition that is unreasonably dangerous. As a result, the first two elements required for a products liability action are satisfied.

Finally, the bill does all of the following:

- 1) The bill allows the attorney general to enforce the prohibition regarding objectionable flows of current and the requirements regarding the deadlines for remedying problems with plants and equipment. A court is allowed to award the attorney general prosecution expenses, including attorney fees.

BILL

2) The bill provides that an electric utility that causes an objectionable flow of current on the property of another is considered to have violated its duty under current law to provide reasonably adequate service.

3) The bill allows a person who shows, by a preponderance of the evidence, that the person is injured by a public utility's violation of laws enforced by the Public Service Commission to collect treble the damages resulting from the injury. Under current law, treble damages are allowed only if the violation is willful, wanton, or reckless. In addition, under current law, the evidentiary standard that applies is clear and convincing evidence, which requires more evidence than the standard under the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Wisconsin

1 **SECTION 1.** 20.455 (1) (gm) of the statutes is created to read:

2 20.455 (1) (gm) *Investigation and prosecution; objectionable flows of current.*

3 All moneys received under s. 196.73 (2) (d), for the expenses of investigation and
4 prosecution of violations of s. 196.73 (2), including attorney fees.

5 **SECTION 2.** 196.64 (1) of the statutes is amended to read:

6 196.64 (1) If a director, officer, employee or agent of a public utility, in the course
7 of the discharge of his or her duties, ~~willfully, wantonly or recklessly~~ does, causes or
8 permits to be done any matter, act or thing prohibited or declared to be unlawful
9 under this chapter or ch. 197, or ~~willfully, wantonly or recklessly~~ fails to do any act,
10 matter or thing required to be done under this chapter, the public utility shall be
11 liable to the person injured thereby in treble the amount of damages sustained in
12 consequence of the violation. No recovery as in this section provided shall affect a
13 recovery by the state of the penalty prescribed for such violation.

14 **SECTION 3.** 196.64 (2) of the statutes is amended to read:

-4-
The Electrical Bill of Rights for remedying

196.64 (2) The burden of proof in an action under sub. (1) rests with the person injured to prove the case by clear and convincing a preponderance of the evidence.

SECTION 4. 196.73 of the statutes is created to read:

the remedying of *for remedying*
Wisconsin Consumer's Electrical Bill of Rights
196.73 Bill of rights regarding objectionable flows of electric current.

Intent To provide good power quality and electrical safety for the health and well-being of all of Wisconsin.
 (1) DEFINITIONS. In this section:

(a) "Electric provider" means a public utility that furnishes electricity directly or indirectly to the public or a cooperative association organized under ch. 185 for the purpose of providing electric service to its members only.

(b) "Grounding conductor" means a conductor that connects the electrical distribution system of an electric provider to a grounding electrode or electrodes.

(c) "Objectionable flow of current" means a *steady state of load current* ~~flow of electrical current~~ of any *for five (5) seconds or more* ~~magnitude~~ on a grounding conductor or any other conductor that normally does not carry electrical current, except for any temporary flow of electrical ~~current~~ *fault* that is caused by *phase-to-ground fault(s)* ~~abnormal~~ conditions and results from the performance of a grounding conductor's protective functions regarding faults or lightning. ~~fault~~ *See Wisconsin*

(2) ELECTRIC PROVIDER DUTIES. (a) No electric provider may cause an objectionable flow of current to occur on property owned, leased, or occupied by any other person. For purposes of s. 196.03 (1), service by a public utility is not reasonably adequate if the public utility violates this paragraph.

(b) A person who owns, leases, or occupies property on which an electric provider has violated par. (a) may bring an action to enjoin the violation, for damages resulting from the violation, or both. If the person prevails in the action, the court shall, notwithstanding s. 814.04 (1), allow reasonable attorney fees and costs to be paid by the electric provider. The court shall award treble the damages resulting from the violation if, before bringing the action, the person provided written notice

BILL

- 5 -

1 of the violation to the electric provider and the electric provider failed to remedy the
2 violation within 30 days after receiving such notice.

3 (c) 1. Except as provided in subds. 2. and 3., no later than January 1, 2012, each
4 electric provider shall remedy all problems associated with its plant or equipment
5 that cause an objectionable flow of current on property owned, leased, or occupied by
6 a person other than the electric provider.

7 2. Except as provided in subd. 3., if an objectionable flow of current is discovered
8 in 2011 on property owned, leased, or occupied by a person that receives electric
9 service from an electric provider, the electric provider shall remedy all problems
10 associated with its plant or equipment that cause the objectionable flow of current
11 no later than one year after the objectionable flow of current is discovered.

12 3. This paragraph does not apply to objectionable flows of current about which
13 a person provides notice to an electric provider, or brings an action, under par. (b).

14 (d) The attorney general may bring an action to enforce this subsection and a
15 court may award the attorney general the reasonable and necessary expenses of
16 prosecution, including attorney fees, from any person who violates this subsection.
17 All moneys awarded by a court under this paragraph shall be credited to the
18 appropriation account under s. 20.455 (1) (gm).

19 (3) PRODUCTS LIABILITY. If an electric provider that furnishes electricity to a
20 customer or member causes an objectionable flow of current on property owned,
21 leased, or occupied by the customer or member, the electric provider is considered,
22 for purposes of any products liability action brought by the customer or member
23 against the electric provider regarding the objectionable flow of current, to have
24 provided a product in a defective condition to the customer or member that is
25 unreasonably dangerous to the customer or member.

(4) TRESPASS; EASEMENTS. (a) An objectionable flow of current that an electric

provider causes on the property of another person is a trespass on that property,

~~unless the other person expressly consents to the objectionable flow of current.~~ ^{Add:} A

person is not required to show irreparable harm for a court to issue a preliminary injunction to restrain such a trespass. ~~★ No allowable easement is obtainable for objectionable flow of current~~

(b) An electric provider may not obtain a prescriptive right to cause an objectionable flow of current on property on the property of another person.

(5) PENALTIES. (a) An electric provider that violates sub. (2) (c) 2. ~~may be~~ ^{shall be} required to forfeit ~~not more than~~ \$1,000 for each violation. Each day of continued violation constitutes a separate violation.

(b) An electric provider that violates sub. (2) (c) 1. shall be required to forfeit ~~not more than~~ ^{not less than} \$500,000, ~~per individual complainant~~. ^{- 1,000,000} The court or somebody will consider a factor

(6) OTHER REMEDIES. The rights and remedies under this section are in addition ~~that~~ ^{involve} to any other rights or remedies that may exist at law or in equity.

SECTION 5. 893.28 (2) of the statutes is amended to read:

893.28 (2) Continuous use of rights in real estate of another for at least 10 years by a domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, or a cooperative association organized under ch. 185 to furnish telegraph or telecommunications service or transmit heat, power or electric current to its members, establishes the prescriptive right to continue the use, except as provided by s. ss. 196.73 (4) (b) and 893.29. A person who has established a prescriptive right under this subsection may commence an action to establish prescriptive rights under ch. 843.

SECTION 6. Initial applicability.

-7-

1 (1) The treatment of section 196.64 (1) and (2) of the statutes first applies to
2 violations occurring on the effective date of this subsection.

3 (2) The treatment of section 196.73 (3) and (4) (a) of the statutes first applies
4 to objectionable flows of current that occur on the effective date of this subsection.

5 (END)

~~Handwritten signature~~
~~Handwritten signature~~

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2364/2dn

MDK:.....

gjs

Representative Gronemus:

This bill is identical to the previous version, except for the following changes:

1. The title of proposed s. 196.73 is changed to "Bill of rights for remedying objectionable flows of electric current." I don't want to call it a "consumer's" bill of rights, because some of the remedies apply to people who are not customers or members of electric utilities or cooperatives. Also, a reference to "remediation" is added to the relating clause of the bill.
2. Please review the new definition of "objectionable flow of current". In addition to deleting language that appeared to be unnecessary, I reworded the definition for more clarity. Although I tried to maintain your intended meaning, it is possible that I inadvertently changed the meaning of the definition. ✓
3. This version includes a statement of legislative intent regarding the harm of objectionable flows of current. I added this statement because it may help the bill withstand a challenge based on the argument that, to the extent that the bill eliminates the property right of an electric provider to cause an objectionable flow of current, the bill is an unconstitutional taking. However, I did not include the language about the intent to provide good power supply because I think a court could misuse that language to limit the remedies available under the bill. ✓
4. The prohibition on trespasses does not allow a person to consent to an objectionable flow of current. ✓
5. The prohibition on obtaining a prescriptive right to cause an objectionable flow of current is revised to also prohibit obtaining an easement or other property interest for causing an objectionable flow of current. I made this change to make the prohibition as broad as possible. ✓
6. The penalties are changed. ✓
7. I eliminated the exception to the 2012 deadline for objectionable flows of current that are the subject of court actions. Upon further reflection, I decided the exception causes confusion. Without the exception, I think it's clear that the deadlines imposed by a court are independent of the 2012 deadline. ✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

D-NOTE
2003 BILLRm has
been
Rm

INSERT B

Regrat.

remediation
of

- 1 AN ACT *to amend* 196.64 (1), 196.64 (2) and 893.28 (2); and *to create* 20.455 (1)
 2 (gm) and 196.73 of the statutes; **relating to:** objectionable flows of electric
 3 current, burden of proof and damages in certain actions against public utilities,
 4 making an appropriation, and providing penalties.

INSERT A

Analysis by the Legislative Reference Bureau

This bill prohibits electric utilities and cooperatives from causing objectionable flows of current on the property of others. "Objectionable flow of current" is defined as ~~a flow of electrical current of any magnitude on a grounding conductor or any other conductor that normally does not carry electrical current~~. A "grounding conductor" is defined as a conductor that connects the distribution system of an electric utility or cooperative to a grounding electrode or electrodes. ~~Excluded from the definition of "objectionable flow of current," and therefore not prohibited by the bill, are temporary flows of electrical current that are caused by abnormal conditions and that result from the performance of a grounding conductor's protective functions regarding faults or lightning.~~

The bill allows a person who owns, leases, or occupies property on which an electric utility or cooperative violates the prohibition to bring an action in court to enjoin the violation and for any damages resulting from the violation. In addition, if the person prevails in the court action, the court is required to award the person attorney fees and costs. Also, if the person provided written notice to the electric utility or cooperative about the violation before bringing the court action, and the electric utility or cooperative failed to remedy the violation within 30 days after

TODAY
6/5
6:15 PM,
if possible

BILL

In addition
receiving the notice, the court must award treble the damages resulting from the violation.

and \$1,000,000
The bill requires each electric utility and cooperative to remedy all problems associated with its plant or equipment that cause objectionable flows of current on the property of others. The deadline for meeting this requirement is January 1, 2012. However, if an objectionable flow of current is discovered in 2011, the electric utility or cooperative must remedy problems with plants and equipment no later than one year after the discovery. ~~These deadlines do not apply to objectionable flows of current about which a person provides written notice or brings a court action under the bill.~~ The penalty for failing to comply with the 2012 deadline is a forfeiture of ~~not more than \$500,000~~ *between*. The penalty for failing to remedy problems discovered in 2011 within the one-year deadline is a forfeiture of ~~not more than \$1,000~~ *6* for each day of failure to comply.

The bill provides that an objectionable flow of current that an electric utility or provider causes on the property of another person is a trespass on that property. ~~unless the other person expressly consents to the objectionable flow of current.~~ *OK* If a person brings an action for a preliminary injunction to enjoin the trespass, the bill provides that the person is not required to show irreparable harm for the court to grant the preliminary injunction. Under current law, a person seeking a preliminary injunction must show irreparable harm and satisfy other requirements. The bill also prohibits an electric utility or cooperative from obtaining a prescriptive right to cause an objectionable flow of current on the property of another person.

The bill allows a person to bring a products liability action against an electric utility or cooperative that causes an objectionable flow of current on property owned, leased, or occupied by the person. Under current law, Wisconsin courts have specified the elements that must be satisfied for a plaintiff to prevail in a products liability action. The first two elements are: 1) the product sold must be in a defective condition; and 2) the product must be unreasonably dangerous. In addition, in *Koplin v. Pioneer Power & Light Co., Inc.*, 154 Wis. 2d. 487, 500 (1990), the Wisconsin Court of Appeals held that a plaintiff could not bring a products liability action against an electric utility for stray voltage. (The Wisconsin Supreme Court reversed the Court of Appeals on other grounds and did not address the products liability holding.) This bill reverses the Court of Appeals holding regarding products liability by specifying that, in a products liability action, an electric utility or cooperative that causes an objectionable flow of current on the property of another person is considered to have provided a product in a defective condition that is unreasonably dangerous. As a result, the first two elements required for a products liability action are satisfied.

Finally, the bill does all of the following:

1) The bill allows the attorney general to enforce the prohibition regarding objectionable flows of current and the requirements regarding the deadlines for remedying problems with plants and equipment. A court is allowed to award the attorney general prosecution expenses, including attorney fees.

IN SEPT 2A

BILL

2) The bill provides that an electric utility that causes an objectionable flow of current on the property of another is considered to have violated its duty under current law to provide reasonably adequate service.

3) The bill allows a person who shows, by a preponderance of the evidence, that the person is injured by a public utility's violation of laws enforced by the Public Service Commission to collect treble the damages resulting from the injury. Under current law, treble damages are allowed only if the violation is willful, wanton, or reckless. In addition, under current law, the evidentiary standard that applies is clear and convincing evidence, which requires more evidence than the standard under the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.455 (1) (gm) of the statutes is created to read:

2 20.455 (1) (gm) *Investigation and prosecution; objectionable flows of current.*

3 All moneys received under s. 196.73 (2) ³(d), for the expenses of investigation and
4 prosecution of violations of s. 196.73 (2) ³, including attorney fees.

5 **SECTION 2.** 196.64 (1) of the statutes is amended to read:

6 196.64 (1) If a director, officer, employee or agent of a public utility, in the course
7 of the discharge of his or her duties, ~~willfully, wantonly or recklessly~~ does, causes or
8 permits to be done any matter, act or thing prohibited or declared to be unlawful
9 under this chapter or ch. 197, or ~~willfully, wantonly or recklessly~~ fails to do any act,
10 matter or thing required to be done under this chapter, the public utility shall be
11 liable to the person injured thereby in treble the amount of damages sustained in
12 consequence of the violation. No recovery as in this section provided shall affect a
13 recovery by the state of the penalty prescribed for such violation.

14 **SECTION 3.** 196.64 (2) of the statutes is amended to read:

BILL

SECTION 3.

(BF)

for remedying

1 196.64 (2) The burden of proof in an action under sub. (1) rests with the person
2 injured to prove the case by ~~clear and convincing~~ a preponderance of the evidence.

3 SECTION 4. 196.73 of the statutes is created to read:

4 **196.73 Bill of rights regarding objectionable flows of electric current.**

5 (1) DEFINITIONS. In this section:

6 (a) "Electric provider" means a public utility that furnishes electricity directly
7 or indirectly to the public or a cooperative association organized under ch. 185 for the
8 purpose of providing electric service to its members only.

INSERT 4-11

9 (b) "Grounding conductor" means a conductor that connects the electrical
10 distribution system of an electric provider to a grounding electrode or electrodes.

11 (c) "Objectionable flow of current" means a flow of electrical current of any
12 magnitude on a grounding conductor or any other conductor that normally does not
13 carry electrical current, except for any temporary flow of electrical current that is
14 caused by abnormal conditions and results from the performance of a grounding
15 conductor's protective functions regarding faults or lightning.

16 (2) ELECTRIC PROVIDER DUTIES. (a) No electric provider may cause an
17 objectionable flow of current to occur on property owned, leased, or occupied by any
18 other person. For purposes of s. 196.03 (1), service by a public utility is not
19 reasonably adequate if the public utility violates this paragraph.

20 (b) A person who owns, leases, or occupies property on which an electric
21 provider has violated par. (a) may bring an action to enjoin the violation, for damages
22 resulting from the violation, or both. If the person prevails in the action, the court
23 shall, notwithstanding s. 814.04 (1), allow reasonable attorney fees and costs to be
24 paid by the electric provider. The court shall award treble the damages resulting
25 from the violation if, before bringing the action, the person provided written notice

INSERT 4-15

BILL

1 of the violation to the electric provider and the electric provider failed to remedy the
2 violation within 30 days after receiving such notice.

3 (c) 1. Except as provided in subd. 2. ~~(a)(b)~~, no later than January 1, 2012, each
4 electric provider shall remedy all problems associated with its plant or equipment
5 that cause an objectionable flow of current on property owned, leased, or occupied by
6 a person other than the electric provider.

7 2. ~~Except as provided in subd. 3.~~ if an objectionable flow of current is discovered
8 in 2011 on property owned, leased, or occupied by a person that receives electric
9 service from an electric provider, the electric provider shall remedy all problems
10 associated with its plant or equipment that cause the objectionable flow of current
11 no later than one year after the objectionable flow of current is discovered.

12 3. This paragraph does not apply to objectionable flows of current about which
13 a person provides notice to an electric provider, or brings an action, under par. (b).

14 (d) The attorney general may bring an action to enforce this subsection and a
15 court may award the attorney general the reasonable and necessary expenses of
16 prosecution, including attorney fees, from any person who violates this subsection.
17 All moneys awarded by a court under this paragraph shall be credited to the
18 appropriation account under s. 20.455 (1) (gm).

19 ~~(3)~~ ⁴ ^(b) PRODUCTS LIABILITY. If an electric provider that furnishes electricity to a
20 customer or member causes an objectionable flow of current on property owned,
21 leased, or occupied by the customer or member, the electric provider is considered,
22 for purposes of any products liability action brought by the customer or member
23 against the electric provider regarding the objectionable flow of current, to have
24 provided a product in a defective condition to the customer or member that is
25 unreasonably dangerous to the customer or member.

BILL

OTHER PROPERTY INTERESTS

(4) TRESPASS; EASEMENTS. (a) An objectionable flow of current that an electric provider causes on the property of another person is a trespass on that property.

unless the other person expressly consents to the objectionable flow of current. A person is not required to show irreparable harm for a court to issue a preliminary injunction to restrain such a trespass.

(b) An electric provider may not obtain a prescriptive right to cause an objectionable flow of current on property on the property of another person.

(5) PENALTIES. (a) An electric provider that violates sub. (c) 2. may be required to forfeit not more than \$1,000 for each violation. Each day of continued violation constitutes a separate violation.

(b) An electric provider that violates sub. (c) 1. shall be required to forfeit not more than \$500,000.

(6) OTHER REMEDIES. The rights and remedies under this section are in addition to any other rights or remedies that may exist at law or in equity.

SECTION 5. 893.28 (2) of the statutes is amended to read:

893.28 (2) Continuous use of rights in real estate of another for at least 10 years by a domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, or a cooperative association organized under ch. 185 to furnish telegraph or telecommunications service or transmit heat, power or electric current to its members, establishes the prescriptive right to continue the use, except as provided by s. ss. 196.73 (b) and 893.29. A person who has established a prescriptive right under this subsection may commence an action to establish prescriptive rights under ch. 843.

SECTION 6. Initial applicability.

BILL

(1) The treatment of section 196.64 (1) and (2) of the statutes first applies to violations occurring on the effective date of this subsection.

(2) The treatment of section 196.73 ⁽³⁾~~(2)~~ and ⁽⁴⁾~~(3)~~ (a) of the statutes first applies to objectionable flows of current that occur on the effective date of this subsection.

(END)

1-note

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2364/2ins
MDK:.....

INSERT 1A:

The bill states that the legislature finds that objectionable flows of current are detrimental to public health, safety, and welfare and the bill's purpose is to substantially advance the state's legitimate interest in eliminating, and providing remedies for, objectionable flows of current.

INSERT 1B:

a steady state of load electrical current for five seconds or more on a grounding conductor or any other conductor that normally does not carry electric current. However, certain temporary flows of current that result from the performance of a grounding conductor's protective functions are excluded from the definition.

INSERT 2A:

, or an easement or other property interest for causing,

INSERT 4-11:

a steady state of load electrical current for five seconds or more on a grounding conductor or any other conductor that normally does not carry electric current, except for any temporary flow of electrical fault current that is caused by a phase-to-ground fault condition and that results from the performance of a grounding conductor's protective functions regarding faults or lightning.

INSERT 4-15:

(2) FINDING AND PURPOSE. The legislature finds that objectionable flows of current are detrimental to public health, safety, and welfare, and the purpose of this section is to substantially advance the state's legitimate interest in eliminating, and providing remedies for, objectionable flows of current.

INSERT 6-6:

An electric provider may not obtain a prescriptive right to cause, or an easement or other property interest for causing, an objectionable flow of current to occur on the property of another person.

INSERT 6-12:

and not more than \$1,000,000. A court imposing a forfeiture under this paragraph shall consider all of the following in determining the amount of the forfeiture:

1. The appropriateness of the forfeiture to the volume of business of the electric provider.
2. The magnitude of harm caused by the violation.
3. The duration of the violation.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2364/2dn
MDK:cjs:cph

June 5, 2003

Representative Gronemus:

This bill is identical to the previous version, except for the following changes:

1. The title of proposed s. 196.73 is changed to "Bill of rights for remedying objectionable flows of electric current." I don't want to call it a "consumer's" bill of rights, because some of the remedies apply to people who are not customers or members of electric utilities or cooperatives. Also, a reference to "remediation" is added to the relating clause of the bill.
2. Please review the new definition of "objectionable flow of current". In addition to deleting language that appeared to be unnecessary, I reworded the definition for more clarity. Although I tried to maintain your intended meaning, it is possible that I inadvertently changed the meaning of the definition.
3. This version includes a statement of legislative intent regarding the harm of objectionable flows of current. I added this statement because it may help the bill withstand a challenge based on the argument that, to the extent that the bill eliminates the property right of an electric provider to cause an objectionable flow of current, the bill is an unconstitutional taking. However, I did not include the language about the intent to provide good power supply because I think a court could misuse that language to limit the remedies available under the bill.
4. The prohibition on trespasses does not allow a person to consent to an objectionable flow of current.
5. The prohibition on obtaining a prescriptive right to cause an objectionable flow of current is revised to also prohibit obtaining an easement or other property interest for causing an objectionable flow of current. I made this change to make the prohibition as broad as possible.
6. The penalties are changed.
7. I eliminated the exception to the 2012 deadline for objectionable flows of current that are the subject of court actions. Upon further reflection, I decided the exception causes confusion. Without the exception, I think it's clear that the deadlines imposed by a court are independent of the 2012 deadline.

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Emery, Lynn

From: Cross, William
Sent: Tuesday, September 16, 2003 9:21 AM
To: LRB.Legal
Subject: Draft review: LRB 03-2364/1 Topic: Prohibiting objectionable flows of electric current

It has been requested by <Cross, William> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-2364/1 Topic: Prohibiting objectionable flows of electric current